INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	3
Conclusion	6

CITATIONS

Cases:

Dunbar v. *United States*, 156 U. S. 185	4
Glasser v. *United States*, 315 U. S. 60	5
Hagner v. *United States*, 285 U. S. 427	4, 5
Jefford v. *United States*, 31 F. 2d 908	4
Lamar v. *United States*, 241 U. S. 103	3
Roberts v. *United States*, 248 Fed. 873, certiorari denied, 247 U. S. 522	4
Rosen v. *United States*, 161 U. S. 29	3
United States v. *Fero*, 18 Fed. 901	4, 5

Statutes:

18 U.S.C. 873	2, 4

Misc.:

Federal Rules of Criminal Procedure, Rule 7(f)	3

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 168

LEON FRIEDMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 11) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 1, 1951 (R. 11). The petition for a writ of certiorari was filed on July 2, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the indictment of petitioner for blackmail in threatening to inform the Collector of Internal Revenue that the person threatened had made a false return under the Internal Revenue Law, without specifying any particular statute, was sufficient against attack made for the first time after his conviction.

STATUTE INVOLVED

18 U.S.C. 873 provides as follows:

> Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

STATEMENT

In an indictment filed September 29, 1950, in the District Court for the Eastern District of Michigan, Southern Division, it was charged that on or about May 27, 1950, petitioner had fraudulently demanded of one Frances Shatanoff $14.00 "under threat of informing the Collector of Internal Revenue that she had violated the Internal Revenue Law in that she had filed a false return, in violation of Section 873, Title 18, U.S.C." (R. 1). After trial at which a jury was waived (R. 3), the court found petitioner guilty, and imposed sentence of five months' imprisonment and a $1,000 fine (R. 5, 6). At no point before

or during the trial did petitioner object to the sufficiency of the indictment (R. 2-5). On appeal to the Court of Appeals for the Sixth Circuit, petitioner's conviction was affirmed (R. 11).

The petition for a writ of certiorari challenges only the sufficiency of the indictment to state an offense.

ARGUMENT

There is no merit in petitioner's contention (Pet. 7) that the indictment does not charge an offense within the meaning of 18 U.S.C. 873, *supra*, p. 2. Even if the indictment is conceded to be "loosely drawn and not to be commended," as the Court of Appeals states (R. 11), it cannot be seriously contended that petitioner was not fairly apprised of the nature of the charges against him so that he could make an intelligent defense, and thereafter be in a position to plead double jeopardy if subsequent proceedings were instituted against him for the same offense. If petitioner thought he could not ascertain the nature of the charges from the indictment, he could have moved before trial to quash or for a bill of particulars. See Rule 7(f), F. R. Crim. P.;[1] *Lamar* v. *United States,* 241 U.S. 103, 116-117; *Rosen* v. *United States,* 161 U.S. 29, 34. However, he did not do so.

[1] "The court for cause may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires."

He made no attack upon the sufficiency of the indictment until after the court had entered a finding of guilty and sentenced him. Such tardy complaint came too late under the circumstances, petitioner showing no prejudice or violation of any substantial rights. Cf. *Hagner* v. *United States,* 285 U.S. 427, 433; *Dunbar* v. *United States,* 156 U.S. 185, 191-192.

There was no fatal defect in the indictment by reason of its failure to allege the violation by the person blackmailed of a particular federal internal revenue statute (see Pet. 3-4). Cf. *United States* v. *Fero,* 18 Fed. 901, 904 (E.D. Wisc.) in which the court, in construing the blackmail provisions of section 5484 of the Revised Statutes, similar in substance to the present 18 U.S.C. 873, rejected an argument that it was necessary for the indictment to allege the particular statute which the party threatened had violated. See also *Jefford* v. *United States,* 31 F. 2d 908, 909-910 (C.A. 8); *Roberts* v. *United States,* 248 Fed. 873, 877 (C.A. 9), certiorari denied, 247 U.S. 522.

Nor is there anything in the record which suggests that petitioner at the trial understood the indictment as referring to a state Collector and a state Internal Revenue Law, instead of to a federal officer and law (see Pet. 4). The indictment, making no reference even indirectly to state officers or laws, concludes with reference to the Federal statute, 18 U.S.C. 873, which speaks of

violation by the party threatened of "any law of the United States." That the Collector of Internal Revenue and the Internal Revenue Law mentioned were federal, not state, is the clear purport of the indictment. Petitioner does not contend that he was misled to his detriment in any respect whatsoever.

The indictment is not defective for not stating the date of the alleged false return by Mrs. Shatanoff, that being merely a matter of detail and evidence. See *Glasser* v. *United States,* 315 U.S. 60, 67; *United States* v. *Fero, supra,* 18 Fed. at 905. It stated the date and the amount of petitioner's unlawful demand, and contained sufficient allegations to "identify the offense." Cf. *United States* v. *Fero, supra,* 18 Fed. at 904-905. This Court stated the applicable rule in *Hagner* v. *United States, supra,* 285 U.S. 427 at 431:

> The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, "and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offence, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction." *Cochran and Sayre* v. *United States,* 157 U.S. 286, 290; *Rosen* v. *United States,* 161 U.S. 29, 34.

The indictment here satisfied this test.

CONCLUSION

This case involves only application of settled principles of law. There is no conflict in decisions, and it is respectfully submitted that the petition for certiorari should be denied.

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